

## Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03

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ZEN AMCONSUL ISTANBUL

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E.O. 11652: N/A

TAGS: PINT, TU

SUBJ: CONSTITUTIONAL COURT INVALIDATES SECTION OF AMNESTY LAW

REF A) ANKARA A-110; B) ANKARA 3794

SUMMARY: TURKISH CONSTITUTIONAL COURT, IN A DECISION TAKEN ON  
JULY 2, AND OFFICIALLY ANNOUNCED ON JULY 12 OFFICIAL GAZETTE,  
STRUCK DOWN SECTION OF AMNESTY LAW THAT HAD EXCLUDED PERSONS CONVICTED

OF ANARCHIST OR COMMUNIST ACTIVITIES (SO CALLED "CRIMES OF THOUGHT")  
UNDER ARTICLES 141 AND 142 OF TURKISH CRIMINAL CODE. RELEASE OF  
PRISONERS BEGAN OVER WEEKEND. END SUMMARY.

1. ACTING ON THE APPLICATION OF A GROUP OF REPUBLICAN PEOPLE'S  
PARTY (RPP) PARLIAMENTARIANS LED BY PRIMIN ECEVIT (REF A), THE  
COURT HELD THAT ARTICLE 5, PARA A OF THE AMNESTY LAW WAS UNCON-  
STITUTIONAL ON ON PROCEDURAL GROUNDS. TEXT OF THE INVALIDATED  
SECTION READS AS FOLLOWS:

ART 5: THE OFFENSES SPECIFIED IN THE FOLLOWING PARAGRAPHS ARE  
EXCLUDED FROM THE PURVIEW OF THIS LAW:

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A) OFFENSES SPECIFIED IN ARTICLES 141, 142, 146, 149, OF THE TURKISH CRIMINAL CODE, PARAGRAPH B OF ARTICLE 148 OF THE MILITARY CRIMINAL CODE, AND PARAGRAPH 2 OF ARTICLE 414 AND PARAGRAPH 1 OF ARTICLE 416 (RAPE OF MINORS) OF TURKISH CRIMINAL CODE, PROVISION OF PARAGRAPH D OF ART 1 OF THIS LAW (RAF A) ARE RESERVED.

2. ACCORDING TO TEXT OF DECISION IN OFFICIAL GAZETTE, COURT BASED RULING ON TWO GROUNDS:

A) PROCEDURE OF VOTING ON BILL IN PARLIAMENT ARTICLE BY ARTICLE, RATHER THAN AS A WHOLE, WAS HELD UNCONSTITUTIONAL BY AN 8-7 MARGIN.

B) DURING THE PARLIAMENTARY VOTING ON ARTICLE 5, THE TEXTS OF THE NATIONAL ASSEMBLY AND SENATE VERSIONS WERE NOT PUT TO A VOTE AFTER THE JOINT COMMITTEE VERSION WAS ACCEPTED. THIS WAS HELD UNCONSTITUTIONAL BY A 10-5 VOTE. THE COURT ALSO RULED THERE WAS NO NEED TO CONSIDER SUBSTANTIVE MATTERS RAISED IN THE RPP'S APPLICATION, SINCE THE SECTION OF LAW IN QUESTION WAS INVALIDATED ON PROCEDURAL GROUNDS. MOREOVER, SINCE STRIKING ARTICLE 5, PARA A FROM THE LAW DID NOT CREATE A "LEGAL GAP IN THE LAW WHICH THREATENS PUBLIC ORDER," THE COURT SAID THERE WAS NO NEED TO FIX A TIME PERIOD BEFORE THE RULING COULD COME INTO EFFECT, THEREBY DENYING PARLIAMENT A CHANCE TO CORRECT ITS PROCEDURAL ERRORS.

3. ACCORDING TO TURKISH PRESS, THE RELEASE OF PRISONERS BEGAN IMMEDIATELY FOLLOWING PUBLICATION OF THE DECISION IN THE OFFICIAL GAZETTE. JULY 13 CUMHURİYET ESTIMATED 5000 PERSONS (EITHER SERVING SENTENCES OR AWAITING TRIAL) WOULD BE AFFECTED BY THE RULING. AMONG THOSE RELEASED OVER WEEKEND WERE LEFTIST PUBLISHER MUZAFFER ERDOST, DEV GENÇ LEADERS ATTILA SARP AND RUHI KOC AND FORMER TURKISH LABOR PARTY LEADERS BEHICE BORAN, SADUN AREN AND SABAN ERIK ALSO RELEASED WERE NUMBER OF KURDISH NATIONALISTS.

4. REACTION TO COURT'S DECISION, WHICH WAS LEAKED TO PRESS PRIOR TO OFFICIAL ANNOUNCEMENT, HAS TAKEN SHARPLY PARTISAN APPEARANCE. LEFTIST PRESS, NOTABLY CUMHURİYET AND YENİ ORTAM, WELCOMED RULING AS FULFILLING GOVERNMENT COALITION PROTOCOL. ACCORDING TO JULY 15 LIMITED OFFICIAL USE

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PRESS, HOWEVER, OPPOSITION PARTIES, LED BY JUSTICE PARTY (ÇP) CHAIRMAN DEMİREL, CRITICIZED DECISION AS EXCEEDING THE COURT'S AUTHORITY IN A MATTER WHICH SHOULD PROPERLY BE DECIDED BY PARLIAMENT. THIS VIEW, SHARED BY DP LEADER BOZBEYLİ AND RP CHAIRMAN FEYZİOĞLU, WAS ALSO EXPRESSED IN A WRITTEN STATEMENT ISSUED JULY 6 BY NSP SEC GEN SEVİLGİN. ACCORDING TO JULY 7 MİLLİYET, HOWEVER, NSP LEADER ERBAKAN SAID SEVİLGİN HAD SPOKEN ON HIS OWN AND NOT IN BEHALF OF THE PARTY.

COMMENT: COURT'S RULING IS CLEAR VICTORY FOR ECEVIT AND RPP, WHICH HAD MADE MAJOR COMMITMENT TO MANESTY FOR PERSONS CONVICTED OF "CRIMES OF THOUGHT" UNDER CRIMINAL CODE ARTICLES 141 AND 142. THEIR FAILURE TO ACHIEVE THIS THROUGH LEGISLATION, WHILE COALITION SURVIVED ENSUING CRISIS, HAD NEVERTHELESS DEALT A BLOW TO PRESTIGE OF GOVT, WHICH HAD LITTLE ELSE TO SHOW IN WAY OF LEGISLATIVE ACCOMPLISHMENTS. COURT'S DECISION, HOWEVER, COULD HELP RESTORE SOME OF LOST IMAGE. DESPITE CRITICISM VOICED BY OPPOSITION, FACT THAT PARLIAMENT NOW IN RECESS FOR SUMMER MEANS ECEVIT GOVT IS UNLIKELY TO FACE CHALLENGE ON THIS ISSUE BEFORE NEXT FALL, BY WHICH TIME WHOLE ISSUE MAY HAVE BLOWN OVER. SPAIN

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